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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 537

STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

GEORGE S. COLLINS,
Attorney for Petitioner,
1000 Westchester Avenue,
White Plains, New York.

WARRACK WALLACE,
LEONARD F. HOEFLER, JR.,
Of Counsel.

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To the Honorable, The Chief Justice of the United States and Associate Justices of the Supreme Court of the United States

Your petitioner, Standard-Vacuum Oil Company, respectfully prays that a writ of certiorari issue to review a judgment of the Court of Claims of the United States dismissing the within action.

OPINIONS BELOW

Three opinions* were written in the Court of Claims. One majority opinion (Laramore, J.) was joined in by one Judge (Littleton, J.); another majority opinion (Madden, J.) was joined in by another Judge (Jones, C. J.); and a dissenting opinion was written by the fifth judge (Whitaker, J.). The opinions, together with the Court's Findings of Fact, are set forth in Appendix A.

*Not yet reported.

JURISDICTION

The judgment of the Court of Claims was entered on July 12, 1957. Jurisdiction of this Court is invoked under the Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U. S. C. 1255.

QUESTIONS PRESENTED

The questions presented by the instant case are:

(1) Whether during the post-surrender occupation of Japan the residences, offices and other properties of an American corporation in Japan can be occupied and used for periods up to seven and one half years by Generals and other personnel of the Eighth Army of the United States without compensation by the United States.

(2) Whether the Courts of the United States must uphold Japan's wartime seizures of the properties of an American corporation notwithstanding the fact that the United States and its Allies formally repudiated such seizures and, through the Supreme Allied Commander, directed that the properties be restored.

(3) Whether the United States can relieve itself of its obligation to pay just compensation to an American corporation for taking and using its property by shifting its obligation to Japan.

(4) Whether the United States can avoid payment of compensation for its use and occupation of petitioner's properties in Japan on the theory that the occupation of Japan was an undertaking of the Allied Powers and that the United States has no liability.

CONSTITUTIONAL PROVISION INVOLVED

The claim herein is based upon the "just compensation" provision of the Fifth Amendment to the Constitution of the United States:

> ". . . nor shall private property be taken for public use, without just compensation."

The case also involves the Far Eastern Commission's Interim Principles for Restitution of Identifiable Property Confiscated in Japan From Allied Nationals of March 6, 1947 (Department of State Publication 2888, Far Eastern Series 24, 1947), Scapin 1880 and Scapin 1880/3 (Defendant's Exhibit 2), and Paragraph (a) of Article 15 of the Treaty of Peace between the United States and Japan (U. S. Code Congressional and Administrative Service, Vol. 2, 82nd Congress, First Session, 1951, pp. 2737-8). The text of all of the foregoing is set forth in Appendix B.

STATEMENT OF THE CASE

The case was brought in the Court of Claims to recover just compensation under the Fifth Amendment to the Constitution for the use and occupation, by military units of the United States, of certain of petitioner's properties in Japan during the occupation period. The jurisdiction of the Court of Claims is based upon the Act of June 25, 1948, c. 646, 62 Stat. 940, 28 U. S. C. 1491.

There was no dispute of fact in the Court below. The facts were agreed upon by the parties in Pretrial Conference and were incorporated in the Court's Findings of Fact (Appendix A, pp. 9a-18a), the issue of liability being tried separately pursuant to Rule 38(c) of the Court of Claims Rules.

Petitioner is a Delaware corporation (Finding of Fact No. 1). Prior to December 7, 1941, it was the owner and entitled to possession and control of ten properties in Japan, located for the most part in Yokohama (Finding of Fact No. 2). The properties consisted of residences, an office building, gasoline service station and other petroleum distribution facilities, and real estate (see Plaintiff's Exhibits 1A through 1J).

Because of the unprovoked acts of war committed by the Imperial Government of Japan on December 7, 1941, against the Government and people of the United States, the Congress of the United States formally declared war on Japan (Finding of Fact No. 3).

In 1942 and 1943, pursuant to the provisions of the Japanese Enemy Property Custody Law, petitioner's aforementioned properties were designated as enemy properties and seized by the Japanese Government. The titles to and custody of said properties, including the right of sale and disposal, were registered and recorded in the name of the Enemy Property Custodian appointed by the Japanese Ministry of Finance (Finding of Fact No. 3).

On August 14, 1945, the Japanese Government offered to surrender unconditionally to the Allied Powers. On September 2, 1945, an instrument of surrender was signed and the forces of the Allied Powers commenced the military occupation and control of Japan under General Douglas MacArthur, Supreme Commander for the Allied Powers (Finding of Fact No. 4).

On September 3, 1945, General MacArthur issued a directive to the Japanese Government requiring it to place at the disposal of the Occupation Forces of the Allied Powers all local resources required for their use. In furtherance of this directive, General MacArthur established procurement regulations and procedures for the acquisition of facilities in Japan for the use of the Occupa-

tion Forces and for representatives or missions of Allied Governments in Japan (Finding of Fact No. 5). The Supreme Commander designated the United States Eighth Army as the procurement agency for such purposes (Finding of Fact No. 7). Procurement of properties was effected by means of Procurement Demands served by the Eighth Army on the Imperial Japanese Government (Finding of Fact No. 7).

The ten properties of petitioner were thus acquired for use of military units of the United States (Finding of Fact No. 5). Some of the ten properties were so procured at the very beginning of the occupation, in September and October, 1945. Others were procured during 1946 or 1947 (Finding of Fact No. 5, tabulation).

Petitioner's properties were used by various high ranking officers and other personnel of the military forces of the United States, primarily the United States Eighth Army. The specific uses to which the properties were put included living quarters for the Commanding General, Eighth Army; living quarters for the Commanding General, Yokohama Command, Eighth Army; mess and living quarters for personnel of the Eighth Army; gasoline dispensing and storing facilities for the Eighth Army; etc. (See Plaintiff's Exhibits 1A through 1J).

The Japanese Government agreed with the Allied Powers that it would pay, as part of the costs of the occupation of Japan, rental to petitioner for the use and occupation of petitioner's properties by military units of the United States. The Japanese Government attempted to negotiate leases with petitioner for such use of its properties and tendered to petitioner the maximum amount of rental allowable under the Imperial Japanese Rent Control Ordinance, but petitioner refused to execute any lease or to accept the rental offered and tendered by the Japanese Government (Finding of Fact No. 6).

Under the Far Eastern Commission's Policy Decision and Directive of March 6, 1947, entitled "Interim Principles for Restitution of Identifiable Property Confiscated in Japan from Allied Nationals," (Appendix B, p. 19a) the Supreme Commander for the Allied Powers was authorized to restore to the Allied owner property which had been seized, confiscated or sequestered by the Japanese Government. Pursuant to such authorization the Supreme Commander instructed the Japanese Government concerning the procedures to be followed in effecting restoration of such property to the Allied owner (Appendix B, p. 22a). In those cases where the property was under Procurement Demand by the Occupation Forces, the Japanese Government was directed to restore title to the Allied owner immediately, and to restore physical possession after release from Procurement Demand (Finding of Fact No. 8).

Accordingly, on various dates in 1948 and 1949, the titles to the petitioner's properties were re-registered in the name of petitioner under a form of document which stipulated that title to each property was restored "free of all legal encumbrances to which it may have become subject subsequent to the wrongful transfer or seizure" by the Japanese Government (Finding of Fact No. 8). At the times when the titles were re-registered, petitioner was informed, with respect to properties which were still being used by the Occupation Forces that physical possession could not be effected until such time as the properties were no longer required (Finding of Fact No. 8). Later, on various dates from 1948 through 1953, as and when they were no longer required by the Occupation Forces, petitioner's several properties were released by the Eighth Army to the Japanese Government and, in turn, physical possession thereof was restored to petitioner (Finding of Fact No. 5, tabulation).

The United States refused to pay petitioner any compensation for having occupied and used the properties in question or for the deprivation of use thereof by petitioner (Finding of Fact No. 10).

Two Judges in the Court below held that Japan had legally and validly seized petitioner's properties and divested petitioner of any interest in them, that the properties were in turn legally taken by the Allied Powers from Japan, that the occupation of petitioner's properties was not an act by the United States but by the Allied Powers, and therefore, that there was no taking of the properties by the United States (Appendix A, pp. 1a-5a).

Two other Judges of the Court below held that the Supreme Commander for the Allied Powers validly issued a directive to the Japanese Government to supply the occupying forces with such housing as they selected and needed, that when petitioner's properties were so taken there was no taking by the United States but simply use by United States forces, or Allied Forces, of housing furnished to them by Japan, and that consequently, there was no liability upon the United States (Appendix A, pp. 5a-6a).

One Judge, dissenting, held that while the occupation of Japan was a joint enterprise, each Power was liable for the expense of maintaining its own forces, that while petitioner's property in Japan can be regarded as "enemy property" during hostilities, it is not to be so classified after the surrender, and that while the victor has the right to require the conquered enemy to pay the cost of occupation, this does not permit the United States to shift to Japan the responsibility that the United States is under to one of its own citizens for the taking of property. The dissenting Judge held that the United States would be liable for compensation, but only for the period subsequent to the restoration of the legal title some years after the properties were first occupied (Appendix A, pp. 6a-9a).

REASONS FOR GRANTING THE WRIT

1. The Application to the Case at Bar of the Rule that Courts Will Not Question the Validity of Acts of a Foreign Sovereign is a Significant Extension of Such Rule and Raises a Substantial Question Not Heretofore Determined by This Court.

The courts of the United States ordinarily will not undertake to question the seizure of American private property by another sovereign government within its territorial borders, at least when the other government is one which is recognized by the United States. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297 (1918); *Ricaud* v. *American Metal Co.*, 246 U. S. 304 (1918). The reason for the rule is that to "permit the validity of the acts of one sovereign State to be re-examined and perhaps condemned by the courts of another would very certainly 'imperil the amicable relations between governments and vex the peace of nations'." *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 304, *supra*.

The undiscriminating application of the rule to the instant case, however, produces the extraordinary result that the lower Court has upheld the validity of the very same confiscatory measures which the Executive branch previously repudiated and upon the victory, set aside with a direction compelling restitution of property wrongfully seized by the Japanese government.

A more reasonable solution is suggested by Judge Learned Hand in *Bernstein* v. *Van Heyghen Freres Societe Anonyme*, 163 F. 2d 246 (2d Cir. 1947), cert. den. 332 U. S. 772 (1947), who states that the rule is inapplicable if it is established that the Executive branch has determined that the courts should be relieved from applying the general

rule.* It is submitted that a similar modification of the general rule should be adopted in the present case.

The anomalous situation which the ruling below has created is not supported by any decision of this Court. There is no principle of international comity which requires the blind adherence to the general rule given by the Court below.

It is entirely in keeping with the American concept of the sanctity of private property that our courts should refuse to uphold acts of seizure of American property by foreign governments in cases where the Executive has made it clear that our courts are not to be conclusively bound by those acts.

The decision in the case at bar involves a matter of substance and is applicable to many other cases involving property rights in Japan. In the Court below the Government noted that the decision here will be controlling in numerous other pending cases. The application of the stated rule is also of consequence in other situations, for example in the determination of rights in respect of property confiscated by the communist regime in China.

The importance of this issue and the need for a review of the ruling below is clear.

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*In connection with the *Bernstein* case, the State Department declared (too late to affect the decision):

> "The policy of the Executive, with respect to claims asserted in the United States for the restitution of identifiable property (or compensation in lieu thereof) lost through force, coercion, or duress as a result of Nazi persecution in Germany, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials." 20 Department of State Bulletin 592-3 (1949).

See Re, Foreign Confiscations, Chap. XI, 1951.

2. The Case Involves Important Questions with Respect to Property Rights in Occupied Areas which have not heretofore been Decided by This Court.

(a) Assuming, *arguendo*, that the Japanese seizures of petitioner's properties can not be questioned by our courts, the fact remains that the seizures were set aside, and restitution made. The question then is whether petitioner's rights are to be restored retroactively, or whether those rights date only from the re-transfer of technical legal title or, worse, from the re-transfer of physical possession. Stated differently, the question is whether petitioner's rights could be postponed until the Eighth Army chose to permit them to accrue.

The restoration of petitioner's properties, called for by the Policy Decision of the Far Eastern Commission, by the directives (Scapins) of the Supreme Allied Commander, and by the Treaty of Peace (Appendix B) gives a doubtful advantage if such restoration can be indefinitely delayed without compensation. In the instant case, the restoration of the technical legal titles was postponed for periods up to four years (Finding of Fact No. 8, tabulation), and physical possession was delayed up to seven and one half years (Finding of Fact No. 5, tabulation). Under the rationale of the Court below, restoration of petitioner's properties could have been postponed permanently.

There is no justification for the foregoing in any decision of this Court. It is submitted therefore that the decision below should be reviewed by this Court.

(b) The ruling below also poses two variations of another question: whether the United States can avoid the obligation of compensation by asserting that (i) Japan (Judge Madden's opinion) or (ii) the "Allied Powers" (Judge Laramore's opinion) is or are responsible.

It is undisputed that petitioner's properties were procured by the Eighth Army of the United States, the resi-

dences were lived in for years by Generals of the Eighth Army of the United States, and the other properties were used and occupied by officers and personnel of the Eighth Army of the United States.

There is no decision by this Court that under such circumstances the United States can shift responsibility to pay compensation from itself to some other government. Such authority as has been found on the point is to the contrary and is written by the Court of Claims itself. Thus in the similar case of *Seery* v. *United States*, 130 Ct. Cls. 481, (1955), the United States was not relieved of responsibility to compensate the owner of property which the United States Army had taken and occupied during the military occupation of Austria despite an administrative agreement with Austria pursuant to which the latter assumed responsibility toward the owner. And in *Anglo-Chinese Shipping Co. Ltd.* v. *United States*, 130 Ct. Cls. 361 (1955), the Court said by way of dictum that the Allied occupation of Japan was a joint venture for which each government was responsible for the acts of the group.

CONCLUSION

It is respectfully submitted that for the foregoing reasons this petition should be granted.

October 7, 1957

Respectfully submitted,

GEORGE S. COLLINS,
Attorney for Petitioner,
1000 Westchester Avenue,
White Plains, New York.

WARRACK WALLACE,
LEONARD F. HOEFLER, JR.,
Of Counsel.

APPENDIX A

IN THE UNITED STATES COURT OF CLAIMS

No. 50336

(Decided July 12, 1957)

STANDARD-VACUUM OIL COMPANY v. THE UNITED STATES

Mr. George S. Collins for the plaintiff. *Mr. Warrack Wallace* and *Mr. Leonard F. Hoefler, Jr.* were on the briefs.

Mr. David D. Hochstein, with whom was *Mr. Assistant Attorney General George Cochran Doub*, for the defendant.

OPINION

LARAMORE, Judge, delivered the following opinion:

This is an action in which plaintiff seeks to recover damages for the alleged use of certain properties by the United States which are owned by plaintiff and located in Japan.

The paramount question to be answered here is whether the properties in question were taken by the United States for which plaintiff can be compensated under the fifth amendment to the Constitution.

The facts clearly show that the property in question was taken from plaintiff by the Imperial Government of Japan after the outbreak of hostilities, under the provisions of the Japanese Enemy Property Custody Law (No. 99 of December 22, 1941) and Japanese Imperial Ordinance Relative to the Enforcement of Enemy Property Custody Law (Imperial Ordinance No. 1179 of December 1941).

Title to and custody of the properties were registered and recorded in the name of the Enemy Property Custodian appointed by the Japanese Ministry of Finance.

At the time of seizure, Japan was a sovereign independent nation having power and jurisdiction over all property within its territory, and its actions with respect to plaintiff's properties were legally valid and divested the plaintiff of any interest in them. *Ricaud v. American Metal Co.*, 246 U. S. 304, 310; *Shapleigh v. Mier*, 299 U. S. 468, 471.

On August 14, 1945 (U. S. time) the Japanese Government accepted the provisions of the Potsdam Declaration of July 26, 1945, defining the terms for Japanese surrender, and offering to surrender unconditionally to the Allied Powers. This offer was accepted on the same day and the Japanese Government was ordered to cease hostilities and formally surrender to the Supreme Commander for the Allied Powers at a time and place to be designated by him. After the instrument of surrender was signed, the authority of the Japanese Government to rule the state was made subject to the Supreme Commander for the Allied Powers. The instrument of surrender was accepted by the Supreme Commander for the Allied Powers for the United States, the Republic of China, the United Kingdom, and the Union of Soviet Socialistic Republics, and in the interests of the other United Nations at war with Japan, and was also signed by representatives of nine powers at war with Japan. Immediately thereafter General Douglas MacArthur was named Supreme Commander for the Allied Powers and commenced the military occupation and control of Japan.

On September 3, 1945, the Supreme Commander for the Allied Powers issued a directive to the Japanese Government requiring it to place at the disposal of the occupation forces of the Allied Powers all local resources required for their use. Procurement regulations were established for the ac-

quisition of facilities and the properties in question were subjected to demand from the Japanese Government.

Under the Far Eastern Commission's policy decision and directive of March 6, 1947, the Supreme Commander for the Allied Powers was authorized to restore to the allied owner property which had been seized by the Japanese Government. Pursuant to such authorization, the Supreme Commander for the Allied Powers issued instructions to the Japanese Government concerning the procedure to be followed in effecting restoration of the property to the allied owner.

The plaintiff filed demands for the return of each of the properties in question with the Supreme Commander for the Allied Powers, and supplemented them with final requests for restoration in accordance with procedures established by the Supreme Commander for the Allied Powers. In each of its final requests the plaintiff stated:

> We understand that General Headquarters, Supreme Commander for Allied Powers, and the Japanese Government will be relieved of all preservation, maintenance and custodial responsibilities with respect to said property after the date set for restoration, consistent with the procedure for physical repossession of property under Procurement Demand.

Pursuant to such demands for the return of property and final requests for restoration, the Supreme Commander for the Allied Powers directed the Japanese Government to return the properties to the plaintiff. In those instances where the property was being used by the Occupation Forces, the plaintiff was informed that physical possession could not be effected until such time as the property was no longer required by the Occupation Forces.

The military control and occupation of Japan under the sole executive authority of the Supreme Commander for

the Allied Powers began on September 2, 1945, and from its inception the occupation of Japan was an allied undertaking and responsibility. The use of the properties in question was determined by the Supreme Commander for the Allied Powers to be necessary to the occupation of Japan.

Thus the property was, because of the allied victory, legally taken by the Allied Powers from Japan and title restored under a directive of the Supreme Commander for the Allied Powers.

It is to be noted at this point that all action taken was by the Supreme Commander for the Allied Powers, not by the United States. As was said in *Anglo-Chinese Shipping Company, Ltd.* v. *United States*, 130 C. Cls. 361, 362:

> * * * The occupation of Japan was a joint venture, participated in by the United States of America, the United Kingdom, China, and Russia; * * *.

This leaves no doubt but that occupation of plaintiff's properties was not an act by the United States but by the Allied Powers. There was no taking by the United States and thus the Government is not liable under the fifth amendment. see *Hirota* v. *MacArthur*, 338 U. S. 197; *Flick* v. *Johnson*, 174 F. 2d 983.

To hold otherwise would be to open the door to claims of not only citizens but noncitizens alike for all occupancy by the Allied Powers, thus causing the United States to bear almost the entire financial burden, not only of the war but also of the peace. This we are not prepared to do.

The unfortunate circumstances of war very often lead not only to human misery but to financial loss as well. It is unfortunate that plaintiff has received no compensation for the occupancy of the properties in question,[1] but on the

[1]Plaintiff was, however, tendered the rent at the Japanese legal rate by Japan but refused to accept claiming it was not bound by the Japanese Rent Control Ordinance. Apparently Japan is willing to pay this amount today.

other hand perhaps it is fortunate that plaintiff's property was preserved and protected by the Allied Powers' occupancy.

There being no fifth amendment taking by the United States, plaintiff's petition is dismissed.

It is so ordered.

LITTLETON, *Judge, concurs.*

MADDEN, *Judge,* delivered the following opinion:

When a defeated country is occupied, the victor has the right to impose upon the government of the defeated country the burden of housing the occupying troops. This would be true whether the occupation was that of a joint force, or by the forces of a single victorious nation. In the instant case the Supreme Commander for the Allied Powers exercised this right by issuing his directive to the Japanese Government. It then became the duty of the Japanese Government to make available to the occupying forces such housing as they selected and needed.

The Japanese Government had the duty to exercise its sovereign power to obtain the housing to comply with the directive of the Supreme Commander. It was not acting as an agent of the Supreme Commander, authorized and directed by him to secure housing for his troops at his nation's expense. It was fulfilling its own obligation as a defeated and occupied sovereign. How it obtained the housing needed to fulfill that obligation was its own problem, governed by its own law. If its law was like our law, including our Fifth Amendment, it would have to pay for what it took for this public purpose, i. e. for fulfilling its obligation as an occupied nation.

Japanese sovereignty, including its power to requisition property for a public purpose, extended, of course, to all the property within its territory, whether the private owner-

ship of that property was in Japanese, British, Dutch, American, or any other citizens. In the instant case, the property selected by the occupying forces and requisitioned by the Japanese Government happened to belong to an American citizen. That fact would seem to be completely immaterial. The important thing was that the property was taken by the Japanese Government for the purposes of that government. There was, then, no taking by the United States. There was use by United States forces, or allied forces, of housing furnished to them by Japan.

It seems that the Japanese Government, under its laws, which laws may have been dictated by the Supreme Commander, or may have been the existing laws of Japan, did pay rent for housing which it took from private persons in order to furnish it to the occupying forces. It tendered such rent to the plaintiff, at the rate which was legal under the laws of Japan. That is all that a Japanese or a Britisher or a Dutchman would have been entitled to and that is all that the plaintiff, an American, was entitled to, for its property in Japan and subject to Japanese laws. The plaintiff refused the tender. It made a mistake in doing so. Whether, under Japanese laws, the money is still available to it we do not know. That is a problem for it and the Japanese Government. Plaintiff's petition must be dismissed.

JONES, *Chief Judge*, joins in the foregoing opinion.

WHITAKER, *Judge*, dissenting:

I cannot agree with the opinions of the majority. In the first place, I do not agree with the reason assigned by Judges Laramore and Littleton for the nonliability of the United States to pay just compensation for the occupation of plaintiff's property, to wit, that it was an occupation not by the United States, but by the Allied Powers.

The occupation of Japan was a joint enterprise of the United States, Great Britain, Russia and other Powers, but

each Power was liable for the expense of the maintenance of its own forces. Food and clothing were purchased by the United States for its troops, by Great Britain for its troops, etc. Liability for these purchases was on the Government making them, and on it alone. The cost of quartering its troops was also the responsibility of the several Governments. That each of them was engaged in a joint venture with the others affords no escape from liability. See *Anglo Chinese Shipping Co.* v. *United States,* 130 C. Cls. 361.

However, there is in my mind a serious question of the liability of the United States on another ground. After the outbreak of war with Japan, plaintiff's property, located in Japan, was, under international law, enemy property, and during hostilities, at least, was liable to utilization, or even to destruction, by our forces with impunity; the owner had no redress against the United States therefor. *Juragua Iron Co. Ltd.* v. *United States,* 42 C. Cls. 99; affirmed 212 U. S. 297; *Herrera* v. *United States,* 222 U. S. 558; Oppenheim, International Law (6th Ed.) Vol. II, section 140; Wheaton, International Law (7th Ed.) p. 248; Hyde, International Law (2d Rev. Ed.) Vol. III, pp. 1726-1731.

Does this rule apply to the property of a citizen of the United States, or a corporation of the United States, after the formal surrender of the enemy?

Technically, of course, the war is not over until the treaty of peace is signed, and occupation forces are a necessary aftermath of the surrender. Also, it will not be disputed that during the period of occupation our Government could require the use of the property of a Japanese national, and that national would have no recourse against it. But does this same rule apply to the property of an American citizen or an American corporation after the enemy has surrendered? After the surrender, is the property of an American citizen still enemy property?

The war was fought for the protection of American lives and property, for the protection of this property as well as other property of our citizens; it was fought to secure restoration of American property that had been seized by the enemy. This purpose was partly accomplished by the order of the Supreme Commander requiring the restoration of the property seized by the Japanese Government. The Japanese Government restored title to it, and would have restored possession except for its occupancy by the American Army. From that time on, Japanese sovereignty over this property was ended; its dominion and control over it was surrendered and the title of its former owner was recognized.

Thereafter, this property could not in reason be classified as enemy property. It was the property of an American corporation, which had been liberated from the hands of the Japanese.

Now, the right of the American Army of Occupation to use it in furtherance of the purposes of the occupation is not open to question; but when so used, it was used, not as enemy property, but as the property of an American corporation. Its owner was entitled to the same recompense as the owner of other property taken by the Government for public purposes, to wit, the payment of just compensation.

The United States had the right, as the victor, to require the conquered enemy to pay the cost of occupation, including the rental value of plaintiff's property; but this does not mean that the United States can shift to Japan's shoulders the responsibility the United States is under to one of its own citizens for the taking of its property. It must compensate the citizen itself, and then look to Japan for restitution. *Seery* v. *United States,* 130 C. Cls. 481.

I think the plaintiff is entitled to recover the fair rental value of the property from the time title to it was restored to plaintiff by the Japanese Government, and until possession of it was restored to plaintiff by the United States Government.

I would remand the case to a Commissioner to determine this amount.

FINDINGS OF FACT

The court, having considered the evidence, the report of Commissioner George H. Foster, and the briefs and argument of counsel, makes findings of facts as follows:

1. Plaintiff, Standard-Vacuum Oil Company, is, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Delaware.

2. Prior to December 7, 1941, plaintiff was the owner and entitled to the possession and control of the following properties in Japan:

Type of Property	Location
Land and Residence	No. 1. Negishi, Yokohama
Land and Residence	No. 2. Negishi, Yokohama
Land and Office Building	No. 8. The Bund, Yokohama
Land and Double Residence	No. 76-B. The Bluff, Yokohama
Land and Residence	No. 219-B. The Bluff, Yokohama
Land and Residence	No. 48-C. The Bluff, Yokohama
Land	Kanagawa, Yokohama
Railway Service Station	Yokohama
Land and Oil Installation	Fukagawa, Tokyo
Land and Oil Installation	Hatta, Nagoya

3. Because of unprovoked acts of war committed by the Imperial Government of Japan on December 7, 1941, against the Government and people of the United States, the Congress, by a Joint Resolution approved December 8, 1941, (55 Stat. 795) (December 9 Japan time) formally declared war on Japan.

Pursuant to and under the provisions of Japanese Enemy Property Custody Law (No. 99 of Dec. 22, 1941) and Japanese Imperial Ordinance relative to the enforcement of that law (Imperial Ordinance No. 1179 of December 1941), the properties described in paragraph 2 were designated as enemy properties and seized by the Japanese Government in 1942 and 1943, and the title to and custody of said properties, including the right of sale and disposal, were registered and recorded in the name of the Enemy Property Custodian appointed by the Japanese Ministry of Finance.

4. On August 14, 1945, (U. S. time) the Japanese Government accepted the provisions of the Potsdam Declaration of July 26, 1945, defining the terms for Japanese surrender, and offered to surrender unconditionally to the Allied Powers. This offer was accepted on the same day and the Japanese Government was ordered and directed to cease hostilities and formally surrender to the Supreme Commander for the Allied Powers at a time and place to be designated by him.

On September 2, 1945, an instrument of surrender was signed by representatives of the Japanese Emperor and Government whereby, among other things, the unconditional surrender of Japan to the Allied Powers was proclaimed and the authority of the Emperor and Japanese Government to rule the state was made subject to the Supreme Commander for the Allied Powers. The instrument of surrender was accepted by the Supreme Commander for the Allied Powers for the United States, the Republic of China, the United Kingdom, and the Union of Soviet Socialistic Republics, and in the interests of the other United Nations at war with Japan, and was also signed by representatives of nine powers at war with Japan, including the defendant.

Immediately thereafter, forces of the Allied Powers, including the defendant, commenced the military occupation and control of Japan under General Douglas MacArthur, Supreme Commander for the Allied Powers.

5. On September 3, 1945, the Supreme Commander for the Allied Powers issued a directive to the Japanese Government requiring it to place at the disposal of the Occupation Forces of the Allied Powers all local resources required for their use in accomplishing the terms of surrender and to establish a central agency to receive requisitions for areas and facilities required by the Occupation Forces. In furtherance of this directive the Supreme Commander for the Allied Powers established procurement regulations and procedures for the acquisition of facilities in Japan for the use of the Occupation Forces and representatives or missions of Allied Governments in Japan. The properties described in paragraph 2 of the petition (finding 2) were required for the use of military units of the defendant, as part of the Occupation Forces of the Allied Powers, pursuant to the procurement procedures and regulations established by the Supreme Commander for the Allied Powers, by procurement demands placed with the Japanese Government by General Headquarters, Supreme Commander for the Allied Powers, or a duly authorized representative designated by him, for the purpose of obtaining facilities for the Occupation Forces.

The dates when procurement demands for the properties described in paragraph 2 of the petition (finding 2) were placed with the Japanese Government and the dates when the properties were released to the Japanese Government are as follows:

Property	Date of Procurement Demand on Japanese Government	Date Released to Japanese Government
No. 1. Negishi, Yokohama	Sept. 23, 1945	Jan. 13, 1951.
No. 2. Negishi, Yokohama	July 1, 1946	Oct. 26, 1949.
No. 8. The Bund, Yokohama...	Sept. 22, 1945	Various dates to Jan. 23, 1951. (Date of total release).
No. 76-B, The Bluff, Yokohama	Oct. 1, 1945	July 14, 1949 (One-half). June 5, 1950 (Remainder).
No. 219-B. The Bluff, Yokohama.	Apr. 1, 1947	Mar. 31, 1953.
No. 48-C. The Bluff, Yokohama	Oct. 1, 1946	Aug. 27, 1949.
Kanagawa, Yokohama	Oct. 25, 1946	Aug. 4, 1952.
Railway Service Station, Yokohama	June 24, 1946	June 21, 1948.
Fukagawa, Tokyo	Jan. 15, 1947	July 27, 1952.
Hatta, Nagoya	Oct. 4, 1946	Apr. 20, 1953.

The dates of release are subject to correction at time of further proceedings for the determination of the amount of recovery, if necessary.

6. As part of the costs of occupation of Japan by the Allied Powers, the Japanese Government agreed to pay and was obligated and required to pay rental to the plaintiff for the use of the properties which were under procurement demand and were used and occupied by military units of the defendant as one of the Allied Occupying Powers. The Japanese Government on numerous occasions attempted to negotiate leases with the plaintiff for the use of its properties and tendered to the plaintiff the amount of rental due under Japanese law in accordance with the Imperial Japanese Rent Control Ordinance (Imperial Ordinance No. 678 of September 19, 1940, as amended) but the plaintiff refused to execute any lease or to accept the rental offered and tendered by the Japanese Government.

The plaintiff does not agree that it is bound by the Japanese Rent Control Ordinance as applicable to the situation here involved.

7. Plaintiff conducted negotiations and correspondence and had numerous conferences and conversations with representatives of the Japanese Government during the period when the properties were under procurement demand regarding the terms of the proposed leases and the amount of rental to be paid by the Japanese Government, but refused to execute leases or accept any rental upon the ground that the rental offered by the Japanese Government was too low.

During the same period, plaintiff conducted negotiations and correspondence and had numerous conferences and conversations with officers of the Eighth Army, to obtain repossession of the properties in question. The Supreme Commander for the Allied Powers had designated the Eighth Army of defendant as part of the Occupation Forces of the Allied Powers as the sole procuring agency for Japanese supplies, real estate, construction, and services for all the occupation forces in Japan. Procurement was effected by means of a procurement demand, served by the Eighth Army on the Imperial Japanese Government through Japanese Liaison officers or local Japanese governments.

8. Under the Far Eastern Commission's Policy Decision and Directive of March 6, 1947, entitled "Interim Principles for Restitution of Identifiable Property Confiscated in Japan from Allied Nationals," the Supreme Commander for the Allied Powers was authorized to restore to the allied owner property which had been seized, confiscated or sequestered by the Japanese Government, provided that the restoration of such property should be made without expense to the owners and without prejudicing the claim of the original owners against the Japanese Government for damages to property, rent, depreciation, and other losses.

Pursuant to such authorization, the Supreme Commander for the Allied Powers issued instructions to the Japanese Government concerning the procedure to be followed in effecting restoration of such property to the allied owner. In those cases where the property was under procurement demand by the Occupation Forces the Japanese Government was directed to restore title to the allied owner immediately upon issuance by General Headquarters, Supreme Commander for the Allied Powers, of a directive ordering restoration of the property, and to restore possession to the allied owner after release from procurement demand.

The plaintiff, through duly authorized representatives acting in its behalf, filed demands for the return of each of the properties described in paragraph 2 of the petition (and paragraph 2 of this memorandum) with the Supreme Commander for the Allied Powers, and supplemented them with final requests for restoration in accordance with procedures established by the Supreme Commander for the Allied Powers. In each of its final requests for restoration the plaintiff stated:

> "We understand that General Headquarters, Supreme Commander for Allied Powers, and the Japanese Government will be relieved of all preservation, maintenance and custodial responsibilities with respect to said property after the date set for restoration, consistent with the procedure for physical repossession of property under Procurement Demand.

Pursuant to such demands for the return of property and final requests for restoration, the Supreme Commander for the Allied Powers directed the Japanese Government to return the properties to the plaintiff and set a definite time and place for the signing of receipts for restoration by representatives of the plaintiff and the Japanese Government. In those instances where the property was being used by the

Occupation Forces the plaintiff was informed that physical possession could not be effected until such time as the property was no longer required by the Occupation Forces.

The defendant further alleges that a duly authorized representative of the plaintiff and the Japanese Government executed a "Receipt for Restoration to United Nations National of Property in Japan" for each of the properties described in paragraph 2 of the petition (finding 2) and that the receipt in each instance provided in part as follows:

RECEIPT FOR RESTORATION TO UNITED NATIONS NATIONAL OF PROPERTY IN JAPAN

The signatures of the Restoree and the authorized representative of the Japanese Government, respectively, which are hereto subscribed attest to the fact that the Japanese Government has delivered and transferred and thereby restored possession and custody of the property listed * * *, together with the title indicated, to the Restoree * * *, and that the Restoree has accepted such delivery, transfer, restoration, possession and title of the listed property from the Japanese Government. It is hereby acknowledged and agreed that the following conditions shall apply:

1. The return of the listed property to the Restoree is made at no expense to the Restoree and does not prejudice the claim of the Restoree against the Japanese Government or other enemy governments and/or their nationals for damages to property, rent, depreciation and other losses.

2. Property is restored free of all legal encumbrances to which it may have become subject subsequent to wrongful transfer or seizure.

* * *

5. Anyone injured by the restoration of the property to Restoree shall look to the Japanese Government for relief.

The dates when the properties described in paragraph 2 of the petition (finding 2) were seized by the Japanese Goverment and registered in the name of the Enemy Property Custodian, the dates when demand for return of the property was made by the plaintiff, the dates when title to the properties was registered in the name of the plaintiff, and the dates when receipts for restoration of the properties were executed by representatives of the plaintiff and the Japanese Government are as follows:

Property	Registered in Name of Enemy Property Custodian	Demand for Return of Property	Title Registered in Name of Standard Vacuum Oil Company	Receipt for Restoration of Property
No. 1. Negishi, Yokohama.	Jan. 16, 1942	Aug. 17, 1948	Jan. 18, 1949	Jan. 21, 1949.
No. 2. Negishi, Yokohama.	Jan. 16, 1942	Aug. 17, 1948	Jan. 18, 1949	Jan. 21, 1949.
No. 8. The Bund, Yokohama.	Nov. 23, 1943	Nov. 10, 1948	Feb. 18, 1949	Feb. 10, 1949 July 29, 1949 (Supplemental) Nov. 14, 1949 (Supplemental)
No. 76-B. The Bluff, Yokohama.	Mar. 19, 1942	Aug. 12, 1948	Jan. 19, 1949	June 5, 1950.
No. 219-B. The Bluff, Yokohama.	Feb. 25, 1943	June 17, 1948	Dec. 20, 1948	Dec. 23, 1948.
No. 48-C. The Bluff, Yokohama.	Dec. 24, 1942	May 6, 1948	Dec. 20, 1948	Dec. 23, 1948.
Kanagawa, Yokohama.	Sept. 10, 1942	June 14, 1948	May 23, 1949	May 31, 1948.
Railway Service Station, Yokohama.	Jan. 16, 1942	May 10, 1948	June 19, 1948[1]	June 21, 1948.
Fukugawa, Tokyo.	Sept. 12, 1942	Mar. 3, 1949	May 27, 1949	May 31, 1949.
Hatta, Nagoya.	Sept. 3, 1942	Nov. 1, 1948	Feb. 12, 1949	Feb. 25, 1949.

[1]Custodian removed.

9. A state of war existed between the Imperial Japanese Government and the United States and other Allied Powers from December 8, 1941, until April 28, 1952, when the Treaty of Peace with Japan became effective. The military control and occupation of Japan under the sole executive authority of the Supreme Commander for the Allied Powers began on September 2, 1945, and from its inception the

occupation of Japan was an allied undertaking and responsibility. The use of the properties here involved was determined by the Supreme Commander for the Allied Powers to be necessary to the occupation of Japan in furtherance of the provisions of the Potsdam Declaration of July 26, 1945, and the terms of surrender which were accepted by the Japanese Government.

10. The defendant has refused to pay plaintiff any compensation for having occupied and used the properties here involved, or for deprivation of use thereof by plaintiff, and no action has been taken by Congress or by any department of the United States Government to award the plaintiff compensation therefor except as may be shown above.

11. The following documents were offered and received in evidence:

Laws and Ordinances Pertaining to Foreign Property, March 31, 1950, pages 107 and 109 particularly.

Photostats of certain Imperial Japanese Ordinances and other documents on file in the Office of The Judge Advocate General, Department of the Army.

List of contents of Defendant's Exhibit No. 2.

Copy of "Interim Principles for Restitution of Identifiable Property Confiscated in Japan from Allied Nationals" adopted by the Far Eastern Commission, March 6, 1947.

Report of the Secretary General, of the Activities of the Far Eastern Commission, Feb. 26, 1947 to July 10, 1947. (Pages 21 and 22 thereof.)

Copy of Directive No. 2 of Sept. 3, 1945, to the Japanese Imperial Government.

Copy of Cabinet Order No. 6 included in official Gazette of the Japanese Imperial Government.

Circular No. 15, General Headquarters Supreme Commander for the Allied Powers, Nov. 6, 1951.

Copy of "Japanese Peace Treaty" printed in Senate Document of 82nd Congress, 2d Session.

Property	Registered in Name of Enemy Property Custodian	Demand for Return of Property	Title Registered in Name of Standard Vacuum Oil Company	Receipt for Restoration of Property
No. 1, Negishi, Yokohama.	Jan. 16, 1942	Aug. 17, 1948	Jan. 18, 1949	Jan. 21, 1949.
No. 2. Negishi, Yokohama.	Jan. 16, 1942	Aug. 17, 1948	Jan. 18, 1949	Jan. 21, 1949.
No. 8. The Bund, Yokohama.	Nov. 23, 1943	Nov. 10, 1948	Feb. 18, 1949	Feb. 10, 1949. July 29, 1949 (Supplemental). Nov. 14, 1949 (Supplemental).
No. 76-B. The Bluff, Yokohama.	Mar. 19, 1942	Aug. 12, 1948	Jan. 19, 1949	June 5, 1950.
No. 219-B. The Bluff, Yokohama.	Feb. 25. 1943	June 17, 1948	Dec. 20, 1948	Dec. 23, 1948.
No. 48-C. The Bluff, Yokohama.	Dec. 24, 1942	May 6, 1948	Dec. 20, 1948	Dec. 23, 1948.
Kanagawa, Yokohama.	Sept. 16, 1942	June 14, 1948	May 23, 1949	May 31, 1948.
Railway Service Station, Yokohama.	Jan. 16, 1942	May 10, 1948	June 19, 1948[1]	June 21, 1948.
Fukugawa, Tokyo.	Sept. 12, 1942	Mar. 3, 1949	May 27, 1949	May 31, 1949.
Hatta, Nagoya.	Sept. 3, 1942	Nov. 1, 1948	Feb. 12, 1949	Feb. 25, 1949.

[1]Custodian removed.

Copy of Administrative Agreement between the United States and Japan, 1952.

Memorandum regarding claims of American Nationals under Provisions of the Treaty of Peace with Japan

A photograph of each of the properties described in paragraph 2 of the petition and use of which properties were put under Procurement Demand.

Letter of October 11, 1949 from Eighth Army to Supreme Commander for the Allied Powers.

Conclusion of Law

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

APPENDIX B

Interim Principles for Restitution of Identifiable Property Confiscated in Japan From Allied Nationals

[FEC Policy Decision, March 6, 1947]

1. The Supreme Commander for the Allied Powers should be authorized to restore to nationals of any of the United Nations identifiable property, tangible or intangible, which was located in Japan prior to the outbreak of hostilities between their government and the government of Japan and owned by them at that time or lawfully acquired thereafter, and which was seized, confiscated, or sequestered, formally or otherwise, during the recent hostilities by the Japanese Government, members of its armed forces, or by official or private Japanese or other enemy individuals or groups; provided that:

a. subject to the discretion of the Supreme Commander, restitution should be made at this time only to:

(1) natural persons present in Japan;

(2) juridical persons where the holders of a controlling interest are nationals of Members of the United Nations now resident in Japan;

(3) charitable and religious institutions financed primarily by non-Japanese funds, where a duly authorized agent or properly qualified person is resident in Japan to receive title;

(b) without in any way prejudging the definitive policy later to be adopted by the Far Eastern Commission with respect to the disposition of large-scale enterprises, only small-scale commercial and industrial enterprises should be restored at the present time;

c. though title to gold, other precious metals and foreign exchange may be restored to the United Nations owners, they should rema subject to the laws and regulations in force at any time governing the custody, control and transfer of such assets;

d. the Supreme Commander is satisfied as to the identification of such property.

2. The policy for restitution of similar property to nationals of Members of the United Nations who are not resident in Japan at present will be dealt with in a future paper.

3. For the purpose of determining whether property was in fact confiscated it should be assumed that all property taken by the Japanese or other enemy Government, Armed Forces, or nationals during the recent hostilities from nationals of any of the United Nations was confiscated whether or not payment was made at the time of acquisition unless it can be definitely shown that no duress or fraud was involved.

4. The restitution of property should be made without expense for the owners and without prejudicing the claim of the original owners against the Japanese or other enemy Government and/or their nationals for damages to property, rent, depreciation, and other ascertainable losses. To facilitate the preparation and adjudication of claims, agreed statements as to the extent and condition of the property restored should be drawn up at the time of its return. The Japanese Government should be required to furnish to the owner a complete inventory of the property together with a report by the Japanese official administrator on the management of it and, in the case of industrial and commercial concerns, a closing balance sheet.

5. If payment to restoree, was made at the time of confiscation the Supreme Commander for the Allied Powers should require persons repossessing the property to agree to remit such amounts to the Japanese Government as a prerequisite to restitution. However, actual payment of such amounts should be made only after settlement of claims as specified in paragraph 4 above.

6. If funds received in payment for confiscated property were blocked by the Japanese Government, such funds should be unblocked and the owner permitted to draw upon them on the same basis as depositors in general draw upon their bank funds, except that in the event that the confiscated property is returned such funds should be unblocked only in an amount sufficient to make the payment required in paragraph 5 above.

7. The right to restitution provided in the foregoing paragraphs and even the completion of restitution should not be considered as permission to operate properties where the Supreme Commander for the Allied Powers considers the operation of such property injurious to the occupying forces or to the purposes of the occupation. Similarly, the operation of properties considered by the Supreme Commander for the Allied Powers, upon consultation with the Allied Council for Japan in accordance with the Terms of Reference of the Allied Council for Japan, to be beneficial to the occupying forces and/or the accomplishment of the purposes of the occupation should not await restitution of title or the transfer of possession of such properties; but in such cases compensation for the use of the property should be paid for the account of the owner.

8. Japanese nationals injured by the provisions of the foregoing paragraphs should look to the Japanese Government for relief.

GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS
APO 500

22 April 1948

AG 386.3 (22 Apr 48) CPC/FP
SCAPIN 1880

MEMORANDUM FOR: THE JAPANESE GOVERNMENT

SUBJECT: Procedures for Restoration of Property in Japan to Nationals of the United Nations

1. Reference is made to the following:

a. Memorandum to the Japanese Government, AG 386.3 (6 May 46) CPC, SCAPIN 926, 6 May 1946, subject, "Procedure for Returning Property in Japan to Nationals of the United Nations," from General Headquarters, Supreme Commander for the Allied Powers.

b. Memorandum to the Japanese Government, AG 386.3 (22 Nov 46) CPC/FP, SCAPIN 1354, 22 November 1946, subject: "Restitution of United Nations Nationals' Property Wrongfully Transferred," from General Headquarters, Supreme Commander for the Allied Powers.

2. Memorandum 1b above is hereby rescinded and this memorandum substituted therefor.

3. The Japanese Government is hereby directed to provide the necessary procedures for restoration to nationals of the United Nations identifiable property, tangible or in-

tangible, which was located in Japan prior to the outbreak of hostilities between their governments and the government of Japan and owned by them at that time or lawfully acquired thereafter, and which has been the subject of transfer under duress, wrongful acts of confiscation, dispossession or spoilation, whether pursuant to legislation or by procedure purporting to follow the form of law, or otherwise, during the event of hostilities by the Japanese Government, members of its armed forces or by official or private Japanese or other individuals or groups, enemies of the United Nations.

4. In the absence of definite proof that no duress or fraud was involved, it will be presumed that all property taken from United Nations nationals was wrongfully seized or transferred, whether or not payment was made at the time of acquisition.

5. Property will be returned as it exists on the date of restoration and, unless other provision is made, title will be restored as it existed prior to wrongful transfer or seizure. Vacant possession of real property will be provided in all cases unless the restoree elects to permit the occupants to remain on the premises or unless the premises are occupied by the Occupation Forces.

6. Property will be restored free of all legal incumbrances to which it may have become subject subsequent to wrongful transfer or seizure.

7. The restoration of property will be made without expense to the United Nation or United National national owner and will not prejudice the claim of such owner against the Japanese or other enemy government and/or their nationals for damages to property, rent, depreciation, and other losses.

8. Anyone injured by the above provisions will look to the Japanese Government for relief.

9. Restoration will be made in accordance with the following provisions:

a. General Headquarters, Supreme Commander for the Allied Powers, will issue a directive to the Japanese Government in each case of restoration stating the time and place for the return of specific property.

b. Transfer of title will be made at the Judicial Bureau or its branch offices having jurisdiction prior to the date set for restoration.

c. In each case of restoration, the representative of the Japanese Government will present to the Eighth Army Military Government Officer in the locality in which the property to be restored is located a copy of the directive requiring the restoration.

d. Receipt in the form of the "Receipt for Restoration to United Nation National of Property in Japan" attached hereto as Annex A and containing all provisions therein, will be executed in original and seven copies and will be distributed in accordance with the distribution indicated on the receipt form. All copies will be signed by the restoree and an authorized representative of the Japanese Government and will be witnessed by the Eighth Army Military Government Officer or by his representative. Additional provisions may be included if circumstances require.

e. The Japanese Government will furnish at the time of restoration documentary evidence of transfer of title, a complete inventory of the property being returned and an official final report on the administration of the property from the date of wrongful transfer or seizure, to the date of restoration, said report to include a statement of financial transactions and, in the case of industrial and commercial concerns, a closing balance sheet.

Copies of documentary evidence of transfer of title, inventory and report on administration will be attached to each copy of the receipt.

f. An agreed statement as to the extent and condition of the property being returned will be drawn up, at the time of restoration, will be signed by both the restoree and the authorized representative of the Japanese Government, and will be witnessed by the Eighth Army Military Government Officer or by his representative. A copy of this statement will be attached to each copy of the receipt.

10. Four copies of the accomplished receipt together with all attachments thereto will be submitted to General Headquarters, Supreme Commander for the Allied Powers, within ten days of the completion of the delivery of the property. Documents will be in English and those which are translations will bear a certification as to correctness and authenticity.

FOR THE SUPREME COMMANDER:

R. M. LEVY /s/
R. M. Levy
Colonel, AGD
Adjutant General

GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS
APO 500

18 April 1949

AG 386.3 (22 Apr 48) CPC/FP
SCAPIN—1880/3

MEMORANDUM FOR: JAPANESE GOVERNMENT

SUBJECT: Restoration of Legal Rights and Interests to United Nations Nationals

1. Reference is made to memorandum for the Japanese Government, file AG 386.3 (22 Apr 48) CPC/FP, SCAPIN 1880, 22 April 1948, subject, "Procedures for Restoration of Property in Japan to Nationals of the United Nations," from General Headquarters, Supreme Commander for the Allied Powers.

2. The Japanese Government is hereby directed to employ the following basis in all restorations under the terms of reference 1 above:

3. a. Restoration of legal rights and interests will be made as they existed on the date of wrongful transfer or seizure within the meaning of reference 1 above. The date of the outbreak of hostilities between the government of the United Nations national claiming restoration and the government of Japan will be considered to be such date of wrongful transfer or seizure unless the facts clearly indicate that a later date is applicable.

b. Restoration of physical property will continue to be made as it exists on the date of restoration, as specified in reference 1 above.

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c. All restorations will be carried out in conformity with existing Japanese Law.

d. Directives issued by General Headquarters, Supreme Commander for the Allied Powers containing special procedures for restoration of specific types of property will take precedence over this directive.

FOR THE SUPREME COMMANDER:

/s/ R. M. LEVY
R. M. Levy,
Colonel, AGD,
Adjutant General.

Paragraph (a) of Article 15 of the Treaty of Peace between the United States and Japan.

(a) Upon application made within nine months of the coming into force of the present Treaty between Japan and the Allied Power concerned, Japan will, within six months of the date of such application, return the property, tangible and intangible, and all rights or interests of any kind in Japan of each Allied Power and its nationals which was within Japan at any time between December 7, 1941, and September 2, 1945, unless the owner has freely disposed thereof without duress or fraud. Such property shall be returned free of all encumbrances and charges to which it may have become subject because of the war, and without any charges for its return. Property whose return is not applied for by or on behalf of the owner or by his Government within the prescribed period may be disposed of by the Japanese Government as it may determine. In cases where such property was within Japan on December 7, 1941, and cannot be returned or has suffered injury or damage as a result of the war, compensation will be made on terms not less favorable than the terms provided in the draft Allied Powers Property Compensation Law approved by the Japanese Cabinet on July 13, 1951.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 537

STANDARD-VACUUM OIL COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The two opinions on behalf of the majority and the dissenting opinion in the Court of Claims are not yet reported. They are set forth at pages 1a-9a of petitioner's Appendix.

JURISDICTION

The judgment of the Court of Claims was entered July 12, 1957. The petition for a writ of certiorari was filed on October 8, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

QUESTION PRESENTED

Whether the court below correctly ruled that the United States is not obligated to pay for occupancy of petitioner's land in Japan by personnel of the Ameri-

can Eighth Army because (a) the property was a resource of an enemy nation, (b) the dominion exerted over it by Japan in seizing it during the war and subsequently turning it over to the Allied Powers was lawful and is not open to question by American courts, (c) the occupancy of the property was on behalf of the Allied Powers, not the United States alone, (d) the Allied Powers required Japan to pay for use of the property as part of the cost of rehabilitation and Japan has tendered compensation to petitioner, and (e) that compensation, being in the amount fixed by the Japanese Rent Control Ordinance, is just compensation.

STATEMENT

Prior to the war with Japan, petitioner, a Delaware corporation, owned ten parcels of land in Japan containing residences, an office building, and petroleum distribution facilities (Pet. App. 9a). Japan designated these properties as enemy properties and seized them in 1942 and 1943. They were recorded with its Enemy Property Custodian (Pet. App. 10a).

Japan surrendered on September 2, 1945. Immediately thereafter, forces of the Allied Powers commenced the military occupation and control of Japan under General Douglas MacArthur, as Supreme Commander for the Allied Powers (Pet. App. 10a-11a). On September 3, 1945, the Supreme Commander issued a directive to the Japanese government requiring it to place at the disposal of the Occupation Forces of the Allied Powers all local resources required for their use in accomplishing the terms of the surrender. Procurement procedures and regulations

were established. Pursuant to them, the properties involved here were demanded from the Japanese government for the use of military units of respondent, as part of the Occupation Forces of the Allied Powers, and the properties were turned over to and used by the Eighth Army of the United States. The Eighth Army was the sole procuring agency for Japanese supplies, real estate, construction, and services for all the Occupation Forces of the Allied Powers in Japan. The procurement demands were made individually for the several properties between September 1945 and January 1947 (Pet. App. 11a-13a).

In 1947 the Supreme Commander was authorized to restore to allied owners property which had been seized by Japan, provided that the restoration should be made without expense to the owners and without prejudicing their claims against Japan for damages to property, rent, depreciation, and other losses. The Supreme Commander issued instructions to the Japanese government concerning the procedure to be followed in effecting restoration. In those cases where the property was under procurement demand by the Occupation forces, the Japanese government was directed to restore title to the owner immediately upon issuance by the Supreme Commander of a directive ordering restoration of the property, and to restore possession after release from procurement demand (Pet. App. 13a-14a, 19a-27a). Under that procedure, title to the properties involved here was restored to petitioner on various dates between June 1948 and May 1949 (Pet. App. 16a). The Supreme Commander released the properties back to Japan at various times

between June 1948 and April 1953 and possession was thereupon restored to petitioner (Pet. App. 12a).

As part of the costs of occupation of Japan by the Allied Powers, the Japanese government agreed to pay and was required to pay rental to petitioner for use of the properties which were under procurement demand. The Japanese government on numerous occasions tendered to petitioner the amount of rental due under Japanese law in accordance with the Imperial Japanese Rent Control Ordinance, but petitioner refused the tender on the ground that it was not bound by Japanese rent control law (Pet. App. 12a-13a).

Petitioner sought payment from the United States for the fair rental value of the property from the time title was restored until possession was returned and, upon being refused, instituted this action to recover $375,000, with interest, under the Fifth Amendment to the Constitution. The Court of Claims in two opinions on behalf of the majority held that the United States was not liable. One Judge dissented (Pet. App. 1a-9a).

Two Judges ruled that Japan had legally seized the properties, that the properties were in turn legally taken from Japan by the Allied Powers, that the occupation was not an act by the United States but by the Allied Powers so that there was no taking from petitioner by the United States (Pet. App. 1a-5a). Two other Judges ruled that there was use by the United States forces, or allied forces, of housing furnished to them by Japan, that the property was taken by the Japanese government for the purposes of that government and that the rent tendered to petitioner was at the rate which was legal under the laws of

Japan. The dissenting Judge held that, although the occupation of Japan was a joint enterprise, each of the Allied Powers was responsible for the expense of quartering its own troops, that petitioner's property was not enemy property after the surrender, and that, while the victor has the right to require the conquered enemy to pay the cost of occupation, this does not mean that the United States can shift to Japan the responsibility the United States is under to one of its own citizens for the taking of his property.

ARGUMENT

Petitioner acknowledges that the general rule is that courts of the United States "will not undertake to question the seizure of American private property by another sovereign government within its territorial borders" (Pet. 8). However petitioner contends, that the rule should be modified "if it is established that the Executive branch has determined that the courts should be relieved from applying the general rule" (Pet. 8-9). On this premise petitioner further asserts that "the lower Court has upheld the validity of the very same confiscatory measures which the Executive branch previously repudiated and upon the victory, set aside with a direction compelling restitution of property wrongfully seized by the Japanese government" (Pet. 8). That reasoning is ineffective because, even if such a qualification exists, the decision below gives effect precisely to the Executive determination relative to property in Japan that "all local resources" shall be available to the Allied Powers and that the Japanese government shall pay the rental

for use by the Allied Powers of such local resources owned by United Nations nationals (Pet. App. 11a, 12a, 20a, 23a, 24a).

Similarly, petitioner misconceives the facts and law in contending that the program of the Allied Powers for restoration of properties is of "doubtful advantage if such restoration can be indefinitely delayed without compensation" (Pet. 10). As the Findings of Fact state, the "Japanese Government agreed to pay and was obligated and required to pay rental to the plaintiff for the use of the properties by military units of the defendant as one of the Allied Occupying Powers" (Pet. App. 12a). Such compensation has been tendered to petitioner "on numerous occasions" by the Japanese government (Pet. App. 12a). The fact that the amount of rental was the amount fixed by Japanese law under its Rent Control Ordinance does not render it less than just compensation. That rental is the existing market value for property located in Japan. Such a controlled price normally satisfies the requirement of the Fifth Amendment in the United States. *United States* v. *Commodities Corp.*, 339 U.S. 121. There is no reason why it should not be just compensation for property in Japan.[1]

The fact that the property was used and occupied by the Eighth Army of the United States did not, in the circumstances, make the occupation a project

[1] The memorandum of April 18, 1949, to the Japanese Government by the Supreme Commander entitled "Restoration of Legal Rights and Interests to United Nations Nationals" provided that "All restorations will be carried out in conformity with existing Japanese Law" (Pet. App. 27a).

solely of the United States. The Eighth Army was designated by the Supreme Commander for the Allied Powers as the "procuring agency for Japanese supplies, real estate, construction, and services for all the occupation forces in Japan" (Pet. App. 13a). In performing such function for the Allied Powers, it had to have living quarters. Those living quarters were serving the function assigned to it by the Allied Powers as much as any property which it procured.

The Allied Powers provided the means of paying for the use of such property. Since the use served the purpose which the Allied Powers undertook jointly to promote—namely, the rehabilitation of Japan—they reasonably required the Japanese government to pay for that rehabilitation. *Anglo Chinese Shipping Company, Ltd.* v. *United States*, 130 C.Cls. 361. They did not apportion the cost in any fashion among themselves. Japan has repeatedly tendered fair compensation to petitioner (Pet. App. 12a). On that state of facts, there is no basis for requiring the United States to pay petitioner.

The decisions relied upon by petitioner (Pet. 11) do not support its position. In *Seery* v. *United States*, 130 C.Cls. 481, the Austrian property involved was held to be in liberated country, not in enemy territory, and the United States had assumed an obligation to pay for claims of the kind there involved. In *Anglo Chinese Shipping Company, Ltd.* v. *United States*, 130 C.Cls. 361, the court did not say that the Allied occupation of Japan was a joint venture for which each government was individually responsible, as petitioner contends (Pet. 11), but merely raised

the question and stated that "we do not now decide it" (p. 367).

The decision below presents no conflict of decisions. It rests on its own particular facts and upon Executive foreign policy in Japan after World War II, and will not recur in the future. No constitutional right has been abridged because compensation, if owing, has been provided for and has been tendered in an amount which is just under the Fifth Amendment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

PERRY W. MORTON,
Assistant Attorney General.

ROGER P. MARQUIS,
S. BILLINGSLEY HILL,
Attorneys.

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